

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SHAUN ROSIERE,

Plaintiff,

vs.

UNITED STATES SECURITIES AND
 EXCHANGE COMMISSION,

Defendant.

Case No. 2:09-cv-01975-JCM-PAL

AMENDED ORDER

(Mtn to Quash - Dkt. #8)

This Amended Order corrects the docket number of the motion addressed in the order.

This is a miscellaneous action filed by plaintiff Shaun Rosiere (“Rosiere”), challenging two subpoenas issued by the Securities and Exchange Commission (“SEC”) for financial records pursuant to the provisions of the Right to Financial Privacy Act of 1978. The SEC responded to plaintiff’s Motion to Quash (Dkt. #2) by filing Verified Points and Authorities (Dkt. #5) and a Verification of Amy A. Sumner (Dkt. #6). These documents were electronically filed with the court in accordance with this district’s electronic filing procedures. However, because plaintiff was not registered electronically with the court, the SEC served plaintiff with its response and Ms. Sumner’s verification at his home address, using Federal Express, overnight delivery. The SEC also electronically filed a Certificate of Service (Dkt. #7), certifying that the verified points and authorities and verification of Amy Sumner were served on the plaintiff by overnight delivery. Rosiere responded by filing a Motion to Quash (Dkt. #8) the Certificate of Service (Dkt. #7), Response (Dkt. #5), and Affidavit (Dkt. #6). Rosiere argues that overnight delivery by Federal Express is not effective service under Fed. R. Civ. P. 5(b). Rosiere is correct.

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1 In Magnuson v. Video Yesteryear, 85 F.3d 1424, 1431 (9th Cir. 1996), the Ninth Circuit held
2 that service by Federal Express does not satisfy the requirements of Rule 5(b) and that the actual notice
3 by a means other than that authorized by Rule 5(b) does not constitute valid service. The Ninth Circuit
4 adopted the Rule announced in Salley v. Board of Governors, University of N.C., 136 F.R.D. 417
5 (M.D.N.C. 1991), requiring that a party demonstrate “exceptional good cause for failing to comply with
6 Rule 5(b).” Id. The SEC has not demonstrated exceptional good cause for failing to comply with
7 Rule 5(b).

8 Accordingly,

9 **IT IS ORDERED:**

- 10 1. Rosiere’s Motion to Quash (Dkt. #8) is GRANTED to the extent the SEC shall re-serve
11 its Verified Points and Authorities (Dkt. #5) and Affidavit (Dkt. #6) to Rosiere at his
12 home address by U.S. Mail and shall file proof of service.
- 13 2. The court will enter a written decision and order on Rosiere’s challenge to the two
14 subpoenas at issue within seven days after the government files its certificate of service
15 showing compliance with Rule 5(b).

16 Dated this 29th day of January, 2010.

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19 PEGGY A. LEEN
UNITED STATES MAGISTRATE JUDGE
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